

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JULIAN ORTEGA,

VS.

RICK THALER, Director,
T.D.C.J., Correctional
Institutions Division,
Respondent.

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CIVIL ACTION NO.4:09-CV-734-Y

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS

Before the Court is the petition for writ of habeas corpus under 28 U.S.C. § 2254 of petitioner Julian Ortega, along with the February 8, 2010, findings, conclusions, and recommendation of the United States magistrate judge. The magistrate judge, by amended order, gave the parties until March 1, 2010, to file written objections to the findings, conclusions, and recommendation. As of the date of this order, no written objections have been filed.

The Court has reviewed the pleadings and the record in this case, and has reviewed for clear error the findings, conclusions and recommendation. The Court concludes that, for the reasons stated by the magistrate judge, the petition for writ of habeas corpus should be dismissed with prejudice as barred by limitations.¹

Therefore, the findings, conclusions and recommendation of the magistrate judge are ADOPTED.

The motion to dismiss (docket no. 12) is DENIED.

Petitioner Julian Ortega's petition for writ of habeas corpus under 28 U.S.C. § 2254 is DISMISSED WITH PREJUDICE.

¹Immediately after the magistrate judge's report, Ortega filed a motion to dismiss, by which he again challenges the timeliness and the substance of the Respondent's answer. The motion is without merit and must be denied.

Certificate of Appealability

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253.² Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."³ The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."⁴ A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further."⁵

Upon review and consideration of the record in the above-referenced case as to whether petitioner Ortega has made a showing that reasonable jurists would question this Court's rulings, the Court determines he has not and that a certificate of appealability should not issue for the reasons stated in the February 8, 2010, Findings, Conclusions, and Recommendation of the United States Magistrate Judge.⁶

²See FED. R. APP. P. 22(b).

³RULES GOVERNING SECTION 2254 PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS, RULE 11(a) (December 1, 2009).

⁴28 U.S.C.A. § 2253(c)(2)(West 2006).

⁵*Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003), citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

⁶See FED. R. APP. P. 22(b); see also 28 U.S.C.A. § 2253(c)(2)(West 2006).

Therefore, a certificate of appealability should not issue.

SIGNED March 9, 2010.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE